Public Prosecutor v Soh Soo Yang & Anor

HIGH COURT (KUALA LUMPUR) — CRIMINAL TRIAL NO 45–61 OF 1999
ABDUL WAHAB J
1 AUGUST 2000

Criminal Procedure *— Sentence — Mitigating factors — Charge of culpable homicide not amounting to murder — Accused persons were first offenders — Plea of guilty — Family to support — — Provocation or challenge from an unarmed man — Nature of the attack contradicts the suggestion the accused did so at the insistence of a third party — Need to balance the public interest with mitigating factors — Penal Code s 304(a)*

On 17 June 1999 one Sow Tek Lan ('the aunt') - who had an argument with the deceased - called her nephew ('the first accused') to ask him to come to her place with a weapon to help her. The first accused asked for the assistance of the second accused and one Yip Kok Chong (still at large). When they arrived at the car park of Menara Alpha Kondo and saw the deceased with the aunt, they attacked the deceased with two parangs and a stick. The deceased escaped and ran out towards the main road. The first and second accused, and Yip Kok Chong then returned to the van driven by the second accused and left Menara Alpha Kondo. Immediately upon coming out of the Menara Alpha Kondo, they saw the deceased crossing the road. The second accused drove the van towards the deceased and upon approaching him, the first accused and Yip Kok Chong then attacked the deceased until he died. It is also to be noted that the aunt had committed suicide on 22 June 1999. The first and the second accused had pleaded guilty to a re-amended charge under s 304 (a) of the Penal Code read with s 34. In mitigation, it was submitted that they attacked the deceased after he challenged them and had continued the attack at the urging of the aunt. The first accused also co-operated with police investigations and had given information.

Held:

(1) The response of attacking an unarmed and outnumbered person with parangs and stick, even if these weapons had not been brought with any intention of using them to physically harm anyone, is completely out of proportion to any challenge that is made. At 24 years of age, the first accused is in law an adult, it is difficult to accept he was so much in thrall of the aunt that he would solely act upon her desire and direction, commit such a serious crime. The fact that one is being urged by another does not absolve him of the act. It only makes the person urging him to be party to the act equally liable. This is particularly so in cases where the act that he is being urged to perform is a criminal act (see pp 366G–367A).

(2) The subsequent attack by the roadside was completely indefensible. The deceased was in the process of running away

and was no longer a threat to the aunt. The aunt was no longer with the first and second accused and Yip Kok Chong to urge them to attack the deceased. The ferocity of the attack is evident from the number and nature of the wounds upon the deceased, and the fact the attack continued until the deceased died. Such ferocity belies or contradicts the suggestion they did so entirely at the insistence of the aunt (see p 367D, F).

(3) The offence under s 304 of the Penal Code is one which is so serious that any consideration that the first accused is a first offender or a young person, or that he has personal and family obligations of his own, be they aged parents or a family of young children, can have little balancing effect as mitigation. The submissions in mitigation suffers from the fact it dealt only with the interests of the accused persons, in their personal circumstances. The public interest is served by balancing the interest of the accused with the interest of the public to see not only that serious offences are punished appropriately and with a view to deterrence not only of the guilty person but also others from committing a similar offence (see pp 367G, 368C).

(4) The first accused had only told the police of his involvement, on 22 June 1999, fully five days after the event. A discount of one third would put too high a value to his co-operation, and convenience to investigators and court against the loss of a life. A discount of 20% is the maximum that is appropriate in the circumstances. Giving a discount of 20% and rounding off the result to the nearest round number, the court had arrived at the sentences of 13 years and nine years for the first and second accused respectively (see p 369D–E).

[Bahasa Malaysia summary

Pada 17 Jun 1999 seorang Sow Tek Lan ('emak saudara tersebut') — yang mempunyai pertelingkahan dengan si mati — menelefon anak saudaranya ('tertuduh pertama') dan menyuruhnya datang ke tempat tinggalnya bersama senjata untuk membantunya. Tertuduh pertama meminta bantuan tertuduh kedua dan seorang Yip Kok Chong (yang masih bebas). Apabila mereka tiba di kawasan meletak kereta Menara Alpha Kondo dan melihat si mati bersama emak saudara tersebut, mereka menyerang si mati dengan dua bilah parang dan sebatang kayu. Si mati melepaskan diri dan berlari keluar ke arah jalan raya utama. Tertuduh pertama dan kedua serta Yip Kok Chong kemudiannya pulang ke van yang dipandu oleh tertuduh kedua dan meninggalkan Menara Alpha Kondo. Sebaik sahaja meninggalkan Menara Alpha Kondo, mereka terserempak dengan si mati melintasi jalan raya. Tertuduh kedua memandu van tersebut ke arah si mati dan ketika menghampirinya, tertuduh pertama dan Yip Kok Chong menyerang si mati sehingga dia mati. Ia juga diketahui bahawa emak saudara tersebut membunuh diri pada 22 Jun 1999. Tertuduh

pertama dan kedua telah mengaku bersalah terhadap satu tuduhan yang telah dipinda semula di bawah s 304(a) Kanun Keseksaan dibaca bersama s 34. Dalam peringanan, ia dihujahkan bahawa mereka telah menyerang si mati setelah beliau mencabar mereka dan telah meneruskan serangan kerana didesak oleh emak saudara tersebut. Tertuduh pertama juga bekerjasama dengan siasatan polis dan telah memberikan maklumat.

Diputuskan:

(1) Tindakbalas menyerang seorang yang tidak bersenjata dan bersendirian dengan parang dan kayu, walaupun senjata-senjata ini tidak dibawa dengan niat untuk menggunakannya untuk mencederakan sesiapa secara fizikal, tidak sama sekali berpatutan dengan apa-apa cabaran yang dibuat. Pada umur 24 tahun, tertuduh pertama itu orang dewasa di bawah undang-undang, dan memang sukar menerima alasan bahawa beliau begitu terpengaruh oleh emak saudaranya sehingga beliau sanggup bertindak atas kemahuan dan arahannya, dan melakukan satu kegiatan jenayah yang begitu serius. Hakikat bahawa seseorang itu didesak oleh orang lain tidak mengampuninya. Sebaliknya ia menyebabkan orang yang mendesaknya agar terlibat dalam kegiatan itu turut bersalah. Ini terutamanya dalam kes di mana kegiatan tersebut ialah kegiatan jenayah (lihat ms 366G–367A).

(2) Serangan kemudiannya di tepi jalan tidak boleh dipertahankan langsung. Si mati berada dalam proses melarikan diri dan tidak lagi menjadi ancaman kepada emak saudara tersebut. Emak saudara tersebut tidak lagi berada bersama tertuduh pertama dan kedua dan Yip Kok Chong untuk mendesak mereka untuk menyerang si mati. Keganasan serangan itu jelas dari jumlah dan ciri-ciri luka pada si mati dan dari fakta yang serangan itu diteruskan sehingga si mati meninggal. Keganasan sedemikian menyangkal cadangan bahawa mereka berbuat demikian atas desakan emak saudara tersebut (lihat ms 367D, F).

(3) Kesalahan di bawah s 304 Kanun Keseksaan begitu serius sehingga apa-apa pertimbangan bahawa tertuduh pertama merupakan seorang pesalah pertama atau seorang yang muda, atau bahawa beliau mempunyai tanggungjawab peribadi dan keluarganya sendiri, baik ibubapa yang tua mahupun anak kecil, tidak dapat menjadi pertimbangan bagi peringanan. Hujahan dalam peringanan hanya mempertimbangkan kepentingan tertuduh-tertuduh, dan keadaan peribadi mereka. Kepentingan awam terpelihara dengan mengimbangi kepentingan tertuduh dengan kepentingan awam bukan hanya untuk memastikan bahawa kesalahan serius dihukum sewajarnya dan sebagai langkah pencegahan bukan hanya orang yang bersalah tetapi juga orang lain dari melakukan kesalahan yang serupa (lihat ms 367G, 368C).

(4) Tertuduh pertama hanya memberitahu pihak polis mengenai penglibatannya pada 22 Jun 1999, lima hari selepas kejadian tersebut berlaku. Diskaun satu pertiga akan memberikan nilai yang terlalu tinggi ke atas kerjasamanya, dan kemudahan kepada para penyiasat dan mahkamah terhadap kehilangan nyawa. Diskaun 20% adalah maksimum yang wajar dalam keadaan sebegini. Setelah memberikan diskaun 20% dan membundarkan keputusan itu ke nombor bulat yang terhampir, mahkamah memutuskan hukuman 13 tahun dan sembilan tahun bagi tertuduh pertama dan kedua masing-masing (lihat ms 369D–E).

Notes

For cases on mitigating factors of criminal sentence, see 5 *Mallal's Digest* (4th Ed, 1997 Reissue) paras 2838–2855.

Cases referred to

Kesavan Senderan v PP [1999] 1 CLJ 343 (refd)
Lee Say & Ors v PP [1985] 2 CLJ 155 (refd)
Mohamed Abdullah Ang Swee Kang v PP [1988] 1 MLJ 167 (refd)
Public Prosecutor v Loo Choon Fatt [1976] 2 MLJ 256 (refd)
Sau Soo Kim v PP [1975] 2 MLJ 134 (refd)

Legislation referred to

Criminal Procedure Code s 282(d)
Penal Code ss 34, 304(a)

Earnest Azad (*V Rajadevan* with him) (*Earnest Azad & Assoc*) for the accused.

Vong Poh Fah (Deputy Public Prosecutor, Attorney General's Chambers) for the respondent.

Abdul Wahab Patail J. : The first and the second accused pleaded guilty to a re-amended charge as follows:

Pertuduhan pindaan semula

Bahawa kamu pada 17 Jun 1999, jam lebih kurang 3.30 pagi bersama-sama seorang lagi yang masih bebas di antara tempat letak kereta Menara Alpha Kondo hingga ke Jalan 4/27A, Seksyen 2 Wangsa Maju, di dalam daerah Sentul, di dalam Wilayah Persekutuan Kuala Lumpur, dalam meneruskan niat bersama kamu semua, telah menyebabkan kematian Chan Khim Heng, KP: 730426-10-5155, dengan niat menyebabkan kecederaan badan yang berkemungkinan besar mendatangkan kematian dan dengan itu kamu telah melakukan satu kesalahan yang boleh dihukum di bawah s 304(a) Kanun Keseksaan dan dibaca bersama s 34 Kanun yang sama

Being (1) satisfied that (a) both accused persons had each understood the charge, which charge was interpreted to them in their own language, (b) in

pleading guilty they understood the nature and consequences of their plea of guilty, and which intention to plead guilty was confirmed by their counsel, and (2) after having heard (a) the facts of the case which was accepted as correct by the accused persons and confirmed by their counsel and (b) their plea in mitigation, the court accepted their plea of guilty and convicted them as charged. The court then sentenced the first and the second accused persons to terms of imprisonment of 13 years and nine years respectively effective from the date of arrest, being 22 June 1999 and 24 June 1999 respectively.

The offence with which the accused persons have been charged is a serious offence. It is an offence with a most final consequence upon the victim. The victim cannot be brought back to life. In that result, the offence is the most extreme form in the category of offences unacceptable to any civilized society. For such an offence, of intentionally causing such bodily injury as is likely to cause death, the only appropriate sentence is a substantial custodial sentence.

The facts of the case, which was admitted to be correct, is as follows:

Fakta kes

1 Pada 17 Jun 1999, jam lebih kurang 4.00 pagi, Kpl 87726 Kamal bin Nordin ('pengadu') ketika bertugas di balai polis Wangsa Maju telah menerima satu panggilan telefon daripada seorang lelaki Cina yang tidak mahu dikenali namanya, memaklumkan tentang seorang lelaki dijumpai terbaring dengan berlumuran darah di tepi Jalan 4/27A Seksyen 2, Wangsa Maju, Kuala Lumpur.

2 Pengadu seterusnya telah mengarahkan anggota Zone Wangsa Maju 7 ke tempat kejadian. Anggota yang membuat pemeriksaan di tempat kejadian tersebut telah mengesahkan penemuan satu mayat seorang lelaki Cina yang terbaring di atas jalan dengan berlumuran darah dan terdapat kesan-kesan tetakan. Pengadu seterusnya telah memaklumkan perkara berkaitan kepada OCS Insp Muniandy dan Cawangan Jenayah Utama (D9), Ibu Pejabat Polis Kontinjen Kuala Lumpur.

3 Pegawai penyiasat C/Insp Koh Jok Tian, setelah dimaklumkan tentang penemuan mayat lelaki Cina tersebut, telah pergi ke tempat kejadian pada jam lebih kurang 5.00 pagi dan mendapati si mati adalah seorang lelaki bernama Chan Khim Heng (Nombor KP: 730426-10-5155).

4 Pada hari yang sama, mayat si mati telah dibawa ke Hospital Kuala Lumpur dan dibedah siasat oleh Pakar Pathologi dan Forensik Dr. Nurliza Abdullah. Hasil pemeriksaan post mortem mendapati mangsa mengalami kecederaan yang teruk akibat ditetak dibahagian kepala dan leher, iaitu di bahagian atas kepala, di bahagian kanan hadapan kepala, bahagian tulang pipi sebelah kanan, di bahagian kiri kawasan occipital hingga ke bawah kiri telinga, di bahagian belakang kepala (kesan tetakan berbentuk Y), di tengah-tengah occipital, di

bahagian kanan belakang kepala dan dibahagian belakang leher sebelah bawah, dan kesan-kesan luka yang kompleks di sekeliling bahagian kepala. Selain daripada itu, bahagian badan si mati juga mengalami luka yang parah di sebelah kanan dan kiri bahu, bahagian belakang sebelah atas dan sekitar kawasan belakang dengan kesan tetakan yang dalam, serta putus dua jari tangan kiri dan patah dua jari tangan kanan. Sebab kematian yang dirumuskan adalah akibat daripada 'fatal haemorrhage due to multiple slash wounds to the body'. Keterangan pakar forensik mengesahkan bahawa si mati telah diserang oleh senjata tajam.

5 Hasil siasatan polis menunjukkan bahawa sebelum kematiannya iaitu kira-kira tengah malam 16 June 1999, si mati telah dilihat bersama-sama seorang perempuan bernama Sow Tek Lan di pangsapuri perempuan tersebut beralamat B-13, Menara Alpha Kondo, Seksyen 2, Wangsa Maju, Kuala Lumpur. Adalah didapati bahawa Sow Tek Lan adalah kekasih si mati. Pada ketika itu si mati dan kekasihnya dilihat bergaduh dan bertengkar berkenaan sesuatu. Pada jam 3.18 pagi, 17 Jun 1999, lanjutan daripada pertelingkahan di antara mereka, Sow Tek Lan telah menghubungi Soh Soo Yang ('tertuduh pertama') melalui telefon bimbitnya (bernombor 012-3831889) dan memberitahu tertuduh penama bahawa beliau sedang menghadapi masalah dengan si mati dan menyuruh tertuduh pertama datang segera ke tempat tinggalnya untuk membantunya dengan membawa senjata. Tertuduh pertama adalah anak saudara Sow Tek Lan.

6 Tertuduh pertama semasa dihubungi oleh Sow Tek Lan sedang berada di tempat kerjanya, iaitu di sebuah kedai permainan video di Genting Court, Setapak, Kuala Lumpur. Setelah menerima panggilan telefon daripada Sow Tek Lan, tertuduh pertama seterusnya memberitahu dua orang rakannya iaitu Yip Kok Chong (yang masih bebas) dan Lee Foo Meng ('tertuduh kedua') tentang permintaan Sow Tek Lan. Selanjutnya mereka bertiga pun setuju untuk memberi bantuan kepada Sow Tek Lan seperti yang diminta. Disebabkan tempat kerja tertuduh pertama tiada apa-apa senjata, mereka bertiga seterusnya pergi ke rumah yang dihuni bersama oleh tertuduh pertama dan Yip Kok Chong di No 3, Lorong 7, Air Kuning, Setapak, dan mengambil dua bilah parang dan sebatang kayu dari tempat tersebut. Mereka bertiga seterusnya menuju ke tempat tinggal Sow Tek Lan dengan menaiki van berwarna putih, no pendaftaran BDF 7001, jenis Mitsubishi yang dimiliki dan dipandu oleh tertuduh kedua.

7 Pada jam lebih kurang 3.30 pagi, 17 Jun 1999, mereka bertiga sampai ke Menara Alpha Kondo di mana pada ketika itu si mati kelihatan sedang berdiri bersama Sow Tek Lan di tempat letak kereta Menara Alpha Kondo. Setelah memberhentikan van, mereka bertiga turun dan terus menyerang si mati dengan menetak dan memukul si mati menggunakan parang dan kayu yang dibawa bersama-sama mereka.

8 Akibat daripada serangan tersebut, si mati telah melarikan diri dalam keadaan berlumuran darah menuju ke arah pondok pengawal Menara Alpha Kondo untuk meminta pertolongan. Sow Tek Lan, tertuduh pertama dan Yip Kok Chong seterusnya mengejar si mati hingga ke dalam pondok pengawal. Disebabkan tiada sebarang pertolongan yang diperolehi, si mati kemudian berlari keluar daripada pondok pengawal menuju ke arah jalan besar dan berjaya menghilangkan diri daripada orang yang menyerangnya tadi. Ekoran daripada itu tertuduh pertama, tertuduh kedua dan Yip Kok Chong terus beredar daripada Menara Alpha Kondo dengan menaiki van tertuduh kedua. Sebaik sahaja mereka keluar daripada kawasan Menara Alpha Kondo, mereka ternampak si mati sedang melintas jalan. Mereka bertiga dengan serta-merta berkejar ke arah si mati. Setelah menghampiri si mati, tertuduh kedua pun memberhentikan vannya dan tertuduh pertama, serta Yip Kok Chong, terus turun daripada van tersebut dan menyerang si mati dengan menetaknya sehingga menemui ajalnya di situ.

9 Hasil daripada siasatan yang dijalankan di tempat kejadian, polis telah menjumpai, di antara lain, satu telefon bimbit jenis Ericsson GH688. Telefon bimbit ini didapati mempunyai nombor 012-3831889 dan telah digunakan oleh Sow Tek Lan sebelum pembunuhan Chan Khim Heng berlaku untuk menghubungi dan menyuruh tertuduh pertama datang dengan membawa senjata. Hasil siasatan juga menunjukkan bahawa panggilan terakhir yang tercatit di dalam telefon ini (yang dibuat pada jam 3.18 pagi, 17 Jun 1999) adalah kepada satu telefon bimbit yang bernombor 016-2700813. Adalah didapati bahawa telefon bimbit bernombor 016-2700813 dimiliki oleh tertuduh pertama pada masa sebelum pembunuhan berlaku.

10 Walaupun usaha telah diambil untuk menjejaki dan menahan Sow Tek Lan bagi membantu dalam siasatan kes ini, pihak polis tidak berjaya mengesan beliau. Pada 22 Jun 1999, jam lebih kurang 12.30 pagi, Sow Tek Lan telah dijumpai mati membunuh diri dengan terjun dari bangunan Blok F154 Flat Pekeliling, Jalan Tun Razak.

11 Pada 22 Jun 1999, tertuduh pertama telah hadir di pejabat D9, IPK Kuala Lumpur untuk disoalsiasat. Lanjutan daripada soalsiasat tersebut, beliau telah mengaku kepada polis bahawa beliau, bersama-sama dengan tertuduh kedua dan Yip Kok Chong, terlibat dalam pembunuhan Chan Khim Heng. Seterusnya tertuduh pertama ditahan dan ditangkap oleh polis pada jam lebih kurang 5.30 petang hari yang sama. Pada masa tertuduh pertama ditangkap, telefon bimbit yang bernombor 016-2700813 telah dirampas daripadanya. Pada 24 Jun 1999, jam lebih kurang 10.00 malam, bertindak di atas maklumat yang diterima, polis berjaya menahan dan menangkap tertuduh kedua di hadapan restoran KFC, Taman Kok Lian, Jinjang.

12 Berdasarkan maklumat bahawa senjata-senjata yang digunakan untuk membunuh Chan Khim Heng telah dibuang ke dalam satu tasik di Setapak Jaya, pihak polis telah pergi ke tempat tersebut bersama-sama

tertuduh-tertuduh untuk mencari senjata-senjata tersebut pada 25 Jun 1999 jam lebih kurang 12.30 tengahari. Walau bagaimanapun, polis tidak berjaya menemui senjata-senjata tersebut kerana kawasan tersebut adalah luas dan air tasik di situ adalah tidak jernih dan berlumpur.

13 Pada 25 Jun 1999 polis berjaya mendapatkan van BDF 7001. Siasatan lanjut menunjukkan bahawa van tersebut mempunyai kesan-kesan darah. Kesan-kesan darah ini telah diambil dan dihantar ke jabatan kimia untuk dianalisa. Hasil analisa DNA oleh ahli kimia menunjukkan bahawa darah yang dijumpai di dalam van tersebut mempunyai profil DNA yang sama dengan darah Chan Khim Heng.

14 Fakta-fakta di atas menunjukkan bahawa tertuduh pertama dan tertuduh kedua telah melakukan satu kesalahan di bawah s 304(a) Kanun Keseksaan dibaca bersama-sama dengan s 34 Akta yang sama.

The following submissions were made in respect of each of the accused:

Mitigation for first accused

I am mitigating on behalf of OKT1. (Refer to *Kesavan Senderan v PP* [1999] 1 CLJ 343, for general principles at pp 376–377.)

I urge the court to consider the second consideration of the circumstances of this offence. Principally, the first accused was responding to his aunt's call of distress. The aunt was Soh Teck Lan, who is the first accused father's youngest sister. It was in response to this call for help that first accused proceeded to the scene of crime. The facts also show that the aunt was having a quarrel with her lover, the deceased.

When he arrived at the scene of crime the deceased challenged the first accused and the persons with him. It was in these circumstances that the accused did what he did.

There was clearly no crime deliberately planned in minute detail, but it occurred on the spur of the moment. It ought not have happened. My instructions are that after accused had hit the deceased, they continued to hit the deceased because it was his aunt who urged him not to stop.

Referring to the third consideration, the accused has definitely cooperated with the police. He was called to the police station to assist in the police investigations. And he went. In the course of questioning he admitted to the crime, and subsequently assisted them in their investigations. He even took the police party to the place where he had thrown away the knife.

The accused has pleaded guilty. That has saved substantial time. He expresses regret. He is married, with a wife and a child who is six years old. One of the saddest things is that he cannot be with his child as it grows up. Time spent since his detention has caused deep regret. This is compounded because his aunt who started this sequence of events herself committed suicide a few days after. That resulted in the accused's father, a labourer,

now having to support his aunt's two children. I pray that he be imprisoned in Sungei Buloh.

I refer to the fourth consideration, ie, balance of public interest in deterrence and enabling the accused to turn over a new leaf. I plead to weigh deterrence with the circumstances of this offence. The accused was 24 years old at time of offence. It is most unfortunate that he did what he did. While he must be punished, I would plead that justice be tempered with mercy.

The accused was very close with his aunt. She was influential in his life. The age gap between him and his aunt was not big. She played a crucial role in helping him set up his video stall business. Our instructions are that when the aunt called him for help, she intimated to the first accused that deceased had threatened her and threatened to physically harm her children. She had wanted to call off her relationship with the deceased. That is why he followed his aunt's request and did what he did.

Mitigation for second accused

I also refer to the same principles dealt with by Mr Rajendran.

The second accused is a friend of the first accused. The circumstances of the case apply equally to the second accused, because it all started with the distress call from the aunt of the first accused. The facts show that the aunt instructed them to arm themselves.

When OKT2 went to scene of the crime, he had no knowledge of what to expect.

When they were proceeding to the scene of crime, there probably was no premeditated common intention to commit the crime. When they reached the scene they were challenged by the deceased. The second accused's involvement was minimal in the causing of the bodily harm – he had used a stick, and he had hit the accused once.

It is most unfortunate that the second accused's intention to help his friend had placed him in this predicament.

The second accused has blown genuine request. He had voluntarily given a statement to the police and had come clean on the role he played. I plead that a substantial discount be given as he has been contrite and co-operated with the police and saved considerable public money and time.

In *Kesavan*'s case, a discount of 20–30% was appropriate where the accused pleaded guilty. I pray that such a discount is warranted.

At time of the offence, the second accused was 21 years old. It is submitted that it was the folly of youth that he followed the first accused and the person at large, and struck the deceased with a stick.

He has no previous convictions. He is a first offender. His parents had not bothered to visit him at all – he had been virtually abandoned. The first accused made a representation to his father, requesting that we represent OKT2.

There is no greater moral stigma than to be abandoned in a situation such as this.

The second accused is full of remorse.

The balance between public interest and a chance for the accused to turn over a new leaf: I plead on his behalf because he was only 21 years old. I plead to the court to give him a chance to turn over a new leaf. He has tasted the bitter pill of prison life. I plead that he be given a chance to redeem himself.

The factual considerations

The facts show that Sow Tek Lan called her nephew, Soh Soo Yang ('the first accused') to ask him to come to her place with a weapon to help her. The first accused asked for assistance from his friends, Lee Foo Meng ('the second accused') and Yip Kok Chong who is still at large. They agreed. The three proceeded to the house where the first accused and Yip Kok Chong stayed and took two parangs and a stick. Then they proceeded in a van driven by the second accused to where Sow Tek Lan stayed.

According to the facts of the case which was admitted, the three attacked the deceased with the parangs and the stick when they arrived at the car park of Menara Alpha Kondo and saw the deceased and Sow Tek Lan. In mitigation it was submitted for the first and the second accused that they attacked the deceased after and because he challenged them and they had continued to attack at the urging of Sow Tek Lan.

The question of a challenge was not in the statement of facts that was admitted. However, since the deceased would have been quarrelling with Sow Tek Lan for some time by the time the two accused and the one at large arrived at the car park, I would give the version of the accused persons the benefit of the doubt that the deceased challenged them.

But it would be superficial to categorize the attack upon the deceased as a reaction in the heat of the moment. It was admitted that Sow Tek Lan had asked the first accused to bring a weapon to her assistance. Bringing weapons to a lover's quarrel is not a matter in the ordinary course. Nowhere in the mitigation or the facts as admitted is it suggested that the deceased was unarmed. The nature of his challenge itself was unspecified. The response of attacking an unarmed and outnumbered person with parangs and a stick, even if these weapons had not been brought with any intention of using them to physically harm anyone, is completely out of proportion to any challenge that is made. To continue to do so is even less acceptable.

It was also submitted in mitigation that they had continued the attack at the urging or insistence of Sow Tek Lan. Now, the accused persons are not mentally handicapped, or too young or have shown themselves to be so much under the control of Sow Teck Lan that they cannot think for themselves or could not refuse to carry out the act the latter urged upon them to do. At 24 years of age, the first accused is, in law, an adult being married and with a family of his own, it is difficult to accept that he was so much in thrall of his aunt that he would solely act upon her desire and direction, commit such a serious crime. In this regard, it cannot be ignored that what the latter was urging upon them to do is a serious criminal act.

The fact that one is being urged by another does not absolve him of the act. It only makes the person urging him to be party to the act and equally liable. This is particularly so in cases where the act that he is being urged to perform is a criminal act.

It was admitted that the deceased ran away to the guardhouse of the security guard, and Sow Tek Lan, the first accused and Yip Kok Chong chased him into the guardhouse. Finding no assistance at the guardhouse, the deceased ran out towards the main road.

The first and second accused, and Yip Kok Chong then returned to the van driven by the second accused and left Menara Alpha Kondo. Immediately upon coming out of the Menara Alpha Kondo area they saw the deceased crossing the road. The second accused drove the van towards the deceased and upon approaching him the second accused stopped the van. They got out of the van, and the first accused and Yip Kok Chong then attacked the deceased with parangs until the deceased died.

Even if the argument of being urged by Sow Tek Lan were in some way defensible in mitigation for attacking an unarmed and outnumbered man with parangs and a stick, and chasing the person as he ran away, the subsequent attack by the roadside was completely indefensible. The deceased was in the process of running away and was no longer a threat to Sow Tek Lan. Sow Tek Lan was no longer with the first and second accused and Yip Kok Chong to urge them to attack the deceased. There is no suggestion in mitigation or in the facts that in the second attack where the deceased died, the deceased made any further challenge or had armed himself. The second attack was therefore entirely of their own accord and indeed questions the submission they had attacked because of the insistence of Sow Tek Lan.

The ferocity of the attack is evident from the number and nature of the wounds upon the deceased, and the fact that the attack continued until the deceased died. Such ferocity belies or contradicts the suggestion they did so entirely at the insistence of Sow Tek Lan.

The facts therefore show that the accused persons were willing, and particularly in the case of the first accused and Yip Kok Chong, were enthusiastic parties to the criminal act causing the death of the deceased.

The circumstances in this case of the offence under s 304 of the Penal Code is one which is so serious that any consideration that he is a first offender or a young person, or that he has personal and family obligations of his own, be they aged parents or a family of young children, can have little balancing effect as mitigation. In *Public Prosecutor v Loo Choon Fatt* [1976] 2 MLJ 256 at p 257, Hashim Yeop A Sani J, (later CJ (Malaya)) expressed with admirable clarity the correct psychological approach to sentencing as follows:

> Presidents and magistrates are often inclined quite naturally to be over-sympathetic to the accused. This is a normal psychological reaction to the situation in which the lonely accused is seen facing an array of witnesses with authority. The mitigation submitted by a convicted person will also normally bring up problems of family hardship and the other usual problems of living.

A In such a situation the courts might perhaps find it difficult to decide as to what sentence should be imposed so that the convicted person may not be further burdened with additional hardship. This in my view is a wrong approach. The correct approach is to strike a balance, as far as possible, between the interests of the public and the interests of the accused. Lord Goddard LCJ in *Rex v Grondkowski* [1946] 1 All ER 560, 561 offered some
B good advice when he said:

> 'The judge must consider the interests of justice as well as the interests of the prisoners. It is too often nowadays thought, or seems to be thought, that the interests of justice means only the interests of the prisoners.'

The submissions in mitigation suffers from the fact that it dealt only with
C the interests of the accused persons, in their personal circumstances. The public interest is served by balancing the interest of the accused with the interest of the public to see not only that serious offences are punished appropriately and with a view to deterrence not only of the guilty person but also others from committing a similar offence, but also that the punishment is fair and just according to the crime. Ultimately, the interests of the
D accused person is best served if submissions on their behalf deal not only with the personal concerns of the accused, but also show that it is balanced with the legitimate concerns of public interest, including the recognition that justice is done, not simply from a vague reference to public interest, but also by bringing in into focus by dealing with the just concerns of a victim and his dependants. If the public, including the victims and their
E dependants do not feel justice is done according to the crime, respect for and reliance upon the law will be eroded. It is a clear perception that justice is not done if death caused to an outnumbered and unarmed person is treated so lightly that it is easily balanced by purely personal factors of the person who caused the death and upon an assurance that he regretted it.

F It was submitted for the first accused that two persons were using parangs, not the first accused only, and that it is unfair to place the burden of punishment on the first accused only. If the argument is considered beyond its first appearances, it will be found that it contains no merit. Both the first accused and the person at large were acting together, and each is as guilty as the other. In the absence of evidence that one inflicted more
G injuries than the other, there is no basis for treating them differently. Indeed, it is an admitted fact that the first accused came at the request of his aunt, and the first accused brought the person at large to assist him. There is nothing to show that the person at large had any quarrel of his own with the deceased.

H The second accused had only used a stick. He also says he hit only once. Nevertheless he was not only a willing participant with his associates who used parangs in the first assault, but that the second accused knew they had brought the parangs. Though the second attack was carried out by the first accused and Yip Kok Chong, and there is no evidence that the second accused personally attacked the deceased in the second attack, the facts
I show that he had not only driven the van towards the deceased when he saw the latter along the road, but also stopped the van, enabling the first accused and Yip Kok Chong to alight from the van, and to attack the deceased. He

is not an unwilling participant. I accept that the involvement of the second accused is to a much lesser degree than the first accused and Yip Kok Chong.

In all the circumstances of the case I would have passed a sentence of 16.5 years and 11.5 years on the first and second accused respectively.

The first accused had not only cooperated with police investigations and given information, but had also pleaded guilty. A guideline was set out in *Mohamed Abdullah Ang Swee Kang v PP* [1988] 1 MLJ 167, where Mohamed Azmi SCJ said at p 171,

> It is generally accepted that the extent of the reduction on account of a plea of guilty would be between one-quarter and one-third of what otherwise would have been the sentence.

That case gave recognition to a principle first appearing in *Sau Soo Kim v PP* [1975] 2 MLJ 134. Any such discount must however take into consideration the seriousness of the offence and difficulty of solving it. That discretion always remains with the court: *Lee Say & Ors v PP* [1985] 2 CLJ 155. Although upon questioning, the first accused told the police of his involvement, that was on 22 June 1999, fully five days after the event. He was arrested at 5.30pm, five hours after the body of his aunt was found. Taking into account these factors, a discount of one third would put too high a value to his co-operation, and convenience to investigators and the court against the loss of a life. A discount of 20% is the maximum that is appropriate in the circumstances.

Giving a discount of 20% and rounding off the result to the nearest round number, I had arrived at the sentences of 13 years and nine years for the first and second accused. Pursuant to the discretion under s 282(d) of the Criminal Procedure Code, I had ordered the sentences to take effect from the date of arrest.

Order accordingly.

Reported by Benjamin Yong